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DRAFT

MINUTES

MARCH 11, 1996

DRAFT DECISION: Pine Meadow Definitive Subdivision
PUBLIC HEARING: Admission of Repetitive Application for Baldwin Rd.
Special Permit for Common Drive
DISCUSSION: Proposed amendments to Conservation Cluster bylaw
Carlisle 2000 recommendations
LandTech consulting contract and staffing

Chair Colman convened the meeting at 7:28 p.m. Colman, Duscha, Epstein, Hengeveld, LaLiberte and Tice were present; Yanofsky was absent. Also present was Planning Administrator Mansfield.

MINUTES: The minutes of the meeting of February 26, 1996, were approved as drafted 5-0 on a motion by Hengeveld, seconded by Epstein, LaLiberte not voting.

DRAFT DECISION: Pine Meadow Definitive Subdivision

Present for this discussion were William Costello, Joe March of Stamski and McNary, Richard Gallogly of Rackemann, Sawyer and Brewster, Jay and Luisa Heard, Scott Batchelder, Kathy McDonough, and Michael Abend.

The members reviewed the draft of the Certificate of Approval prepared by the P.A. based on the modifications and conditions approved in concept by the Board at its February 26 meeting, prior to the close of the public hearing. Duscha questioned whether a fire protection easement in text form was common in subdivisions. Mansfield replied that, in his experience, it was not. Epstein observed that the easement also appeared on the plan. He then asked why "Alternative Layout A," showing the relocation of the northerly intersection of Davis Rd. with Maple St. was not on the plan. March replied that it will be added to the plan prior to endorsement, but could not confirm the angle of intersection. Duscha noted that the trail easement on Lot 9 does not connect to the road. Colman pointed out that this was purposeful, that the easement only provides value while and if Lot 10 remains open to the public. He and Epstein both noted that modification #3, providing for the 4 ft. shoulder on Maple St., should make reference to provisions for tree removal in the Scenic Roads statute. Gallogly objected, however, asking that the subdivision approval not be tied to the outcome of a Scenic Road hearing. He and Board members subsequently agreed to the phrase, "subject to the applicant obtaining all necessary approvals," to be added to modification #3. If Scenic Road approval was not obtained, therefore, the shoulder would not have to be built.

Gallogly then addressed modifications #6 and #7. He said that neither is within the Jurisdiction of the Planning Board. #7 would place on the plan a notation limiting the disturbance within wetland areas to no more than 5,000 s.f., as will be required by the Conservation Commission. Gallogly said that his client does not plan on filling more than 5,000 s.f. of wetlands in any case, and offered this as information only to the Conservation Commission. Moreover, he noted, State wetlands regulations would prohibit exceeding this limit. Therefore, he said, it is unnecessary on a subdivision plan, and could have negative effects on the title. But Epstein replied that this condition was agreed to in open public hearing and was written into the minutes, and so should be retained in good faith. Gallogly agreed, and accepted the modification, although he continued to contend that it was confusing. Regarding #6, however, he voiced objection. #6 also mirrored a suggestion of the Conservation Commission, introduced by their consultant, Earth Tech, Inc., that a 25 ft. wide no-cut, no-build conservation restriction be established on several lots adjacent to the edge of the wetlands. Gallogly argued that Earth Tech advised the Cons. Comm. to seek, not impose, such a CR, and such a condition cannot be accepted in the subdivision approval. Among other reasons, he said, there is no permanent delineation of the wetlands. Such a CR, if proposed, would be most appropriately established with Orders of Conditions on each lot individually as they are developed. The Board agreed to delete #6, and to renumber #7 to be #6.

Turning to the proposed easement documents, LaLiberte noted that the Trails Committee wanted to be sure that bicycling and horseback riding would be allowed on the trail, and that in his opinion the proposed language addresses these concerns, to which Gallogly agreed. Epstein asked to have Town Counsel review the easement documents before the Board's endorsement of the plan, and especially questioned whether an indemnification clause was necessary. Gallogly replied that it was not necessary for a homeowner to have indemnification in a trail easement, unlike easements that often involve the presence of construction workers. He added that he knew the attorneys at Kopelman and Paige and would be happy to work with them on this review.

Tice then moved to approve the Definitive Subdivision Plan of Pine Meadow, subject to the modifications and conditions of draft Form C-2, as further modified in the foregoing discussion. Duscha seconded the motion and it was approved by a vote of 5-0-1, Colman, Epstein, Hengeveld, LaLiberte and Tice in favor, Duscha abstaining.

PUBLIC HEARING: Admission of Repetitive Application for Baldwin Rd. Special Permit for Common Drive (Evans)

Colman opened the hearing at 8:12 p.m.

Present ~~for this hearing~~ were Scott, Jane and Ken Evans, Mary Deacon, Steve Pearlman, and Ken Harte.

Mansfield provided the Board with the revised plan, noting that the only change from the plan that was denied on January 22, 1996, is the

addition of a trail easement running west from Baldwin Rd. to the property of Walter Flannery. Scott Evans further described the plan and pointed out the trail in relation to a fence on the property. He also showed how this trail would link with other existing and proposed trails on the Trails Committee map. Duscha asked what relation the easement had to the existing trail. Evans replied that the trail could be on the easement, or slightly to one side.

Duscha then moved to allow the repetitive petition, finding the trail easement to be a specific and material change to the plan that was denied. Epstein questioned the basis of that finding. Colman replied that Town Counsel had told him and the P.A. in teleconference that even a change in the makeup of the Board eligible to vote on the petition is a material change in the conditions that led to denial. He had asked that this opinion be transmitted in written form. With this knowledge, Duscha then withdrew her previous motion, and moved to allow a repetitive petition for White Tail Run based on the eligibility of additional members of the Board to vote on the petition. Hengeveld seconded the motion.

Colman said he believes the trail easement is, nevertheless, the more significant change. But LaLiberte pointed out that the standard in the statute is a change in the conditions in which the previous unfavorable action was taken. He said he feared that the Board could run afoul of a takings issue, that the previous motion could imply that the Board was requiring a trail easement as a condition of approval. Thus, he said, he is more comfortable with the second motion. Epstein cautioned that the Board should not set a precedent of encouraging petitioners to take their chances with a minimum number of eligible members, knowing that if they fail they can always come back for a repetitive petition. But Colman responded that this decision is totally discretionary. He then called for a vote on Duscha's motion, and it was approved by a vote of 6-0.

Steve Pearlman, a neighbor also representing the Trails Committee, reported that the Committee will meet March 22 and discuss this petition, and will report back to the Planning Board with advice on this easement.

Scott Evans asked whether the Board had any instructions regarding the petition he could now present. Duscha replied that the trail easement does not alter her concerns about the location of the common driveway at the end of a long dead-end road. Colman added that Evans would be well advised to address the safety concerns raised by such a situation. But Evans replied that if the Board wished to impose such limitations, it should be so spelled out in the rules and regulations.

Colman closed the public hearing at 8:55 p.m.

STUDY PLAN SUBCOMMITTEE: Proposed amendments to the Conservation Cluster Bylaw for Town Meeting consideration

Ken Ernststoff joined the Board for this discussion. Duscha referred to a revised copy of the proposed amendments that had been prepared by

proposed
Vivian Chaput after the March 4 subcommittee meeting. She said that Chaput was not wedded to the 20% bonus proposed in the draft, and that she, Duscha, would like to see something added that would address the bulk of the houses, i.e., the building envelope, because in her opinion a reduced setback and lot size should be matched by smaller homes.

Epstein asked whether the conservation values cited in Sec. 5.5.1.a.(1) applied to the specific property being developed or to the town as a whole. Colman said that this was an important question, and that the amendment should make this specific and clear.

Ernstoff expressed his surprise that a 20% development bonus was being proposed. He said that this appeared to be contrary to those who have put a great emphasis on limiting growth in Carlisle. He noted that applying these standards to a parcel such as Pine Meadow, three more units could be added to the 15 allowed by right. He said he would have to oppose this article at Town Meeting. Colman replied that the purpose behind the proposed changes is to encourage the application of Conservation Cluster standards to more parcels, as an alternative to conventional development. But Ernstoff argued that the conservation people want is a limit on the number of developable lots, not the preservation of specific individual resources. He said that the Board should propose a complete revision of the Conservation Cluster bylaw, along the lines of the SROSC special permit.

Colman urged Ernstoff to consider a specific example, the open parcel at the corner of Acton and West Streets. He asked if this land was not worth preserving, and suggested that a one lot bonus might not be enough to encourage the landowner to seek a special permit. Ernstoff replied that this did give him reason to pause.

Epstein again tried to focus on the purposes stated in Sec. 5.5.1. to guide the Board's discretion, noting that he had only the limited experience of the Cross St. petition. Duscha responded that, in spite of opinions that these may not be the perfect revisions, Chaput really wants this article on the warrant. She added that, if there is not agreement, the article can always be pulled back at the last minute.

But Hengeveld expressed concern that the proposed amendments are not definite at this point, and that she felt boxed in by the schedule required to move the article to Town Meeting, including a proposed public hearing as required by Chap. 40A to be scheduled for April 8. Mansfield confirmed that, to advertise for the public hearing as well as to meet the Selectmen's March 15 deadline for final language for the article, the Board had to agree on a draft text tonight.

Ernstoff observed again that an effect of the draft as proposed would be to bar landowners who have less than 5 lots from applying for this special permit, which he guessed was not the intent. He noted that most petitioners who have taken advantage of the cluster provisions would have been excluded under this proposal. He concluded that this article is not ready for submission and that it really is a major change.

Colman agreed, concluding that the Board could not make final decisions on the form of the article if major objectives remain in disagreement. He instructed the P.A. to notify the Selectmen that this article should be withdrawn from the warrant.

Review of draft decision: Baldwin Rd. Common Drive (Evans)

Duscha suggested a number of changes in the wording of the reasons in support of her vote against approval of the petition that were accepted by the Board. Epstein and LaLiberte suggested language to simplify the description of the Board's deliberation. The P.A. was asked to incorporate those changes and to file the decision.

Chapter 61A Notice of Intent to Sell Land: Lot 3, Baldwin Rd. (Evans)

Jane Evans identified the Lot 3 on a map as the lot abutting Estabrook Woods. On that basis, Ken Harte observed, this is an important piece of land. Evans replied that the lot as sold would include building restriction buffer adjacent to Estabrook Woods. Colman noted that this was not in the P & S agreement, and whatever is included there is binding. In light of the buyback provision for building rights in the P & S, Ernststoff suggested that a restriction be placed on this lot limiting it to one house, forestalling its future subdivision. Evans then explained that it is her intention to eventually try to assemble the rights to develop elderly housing at this site, linking Baldwin Rd. back to Stearns St. with a gravel, private way. This would involve a reconfiguration of this lot, and change the frontage calculation.

Epstein asked whether this P & S, with its unusual provisions in clause #30, was truly an arms length transaction that would qualify as proper notice to withdraw land from Chap. 61A. LaLiberte echoed this concern, asking what is really being sold and what is the true price. Hengeveld asked if the seller is retaining the right to reconfigure the lot and the right to buy a portion of its value back, then if the Town were to exercise its option to buy, what would it be buying and at what price?

LaLiberte recommended that the Board advise the Selectmen to ask Town Counsel to evaluate the P & S in terms of the requirements of Chap. 61A. Epstein noted that this opinion should be available well within the 120 day time frame the Town has to act, assuming that this is a valid notice.

Discussion of Carlisle 2000 recommendations

A number of the issues introduced by Vivian Chaput at the previous meeting were discussed further and some recommendations reached. These were as follows:

Elected vs. appointed members: The Board concluded that the election of members is preferable. Appointment introduces too strong a power of centralization to the Planning Board function. The reporting responsibility of the Planning Administrator was discussed, with members agreeing that it was important for this position to remain independent of the Town Administrator and the Selectmen.

Length of term: There were arguments supporting both 3 and 5 year terms (the only alternatives allowed under Chap. 41). Colman favored a longer term, citing the long, steep learning curve. Tice felt that some people are scared off by the long commitment. He suggested more emphasis on formal orientation. Members concluded that a mixture of 3 and 5 year terms should be explored.

Associate members: Duscha believed that associates could bring added expertise to the Board, while Hengeveld saw their value in filling in for elected members who have conflicts. They would serve, by statute, only to act on special permits. The Board recommended that associate membership be considered by a 3-2-1 vote, with Duscha, LaLiberte and Tice in favor, Colman and Hengeveld opposed, and Epstein abstaining.

Size of Board: All agreed that 7 was a workable number.

Relationships with other boards: Members believe that it is an important goal to strengthen these relationships, but they pointed out that they are the only Board that formally provides members as liaisons to the other Boards. They also suggested that a structure (and physical environment) that encouraged Board staffs to share information, such as exists in the C.E.C. for Planning, Conservation and Health, ought to be encouraged among other boards.

Clarifying the permitting process: The Board asked the P.A. to provide some guidance on this topic. Mansfield reported that he planned to attend a workshop on this subject on March 15, and will report back to the Board and to Carlisle 2000 on its results.

The Board asked that a memo summarizing these recommendations be circulated among members before it is transmitted to the Carlisle 2000 Committee.

[NOTE: I would propose that these minutes constitute that memo.]

Review of LandTech consulting contract and staffing

Chris Lorrain was present for this discussion. He explained that he now has another new project engineer on staff. Paul Graves, his last engineer, was hired on a three month trial basis because he had no Massachusetts experience. He left in December to pursue graduate school at W.P.I. He said he hopes he has found a top-notch project engineer in Mark Slager. He has 14 years experience in site plan/subdivision work as a civil engineer in Mass., working for Hayes Engineering in Wakefield for 12 years and in the hydrogeologic field

for the past two years. He is a registered P.E. in MA, NH and ME, with an M.S. in civil engineering.

He explained that Kevin Walker has been handling Carlisle's work in the interim, but he is only 3 years out of college. Duscha asked whether Lorrain had reviewed Walker's work on Pine Meadow, and he said he did.

He said he has a staff of 14, and Epstein asked why Carlisle seems to get all the new engineers. Lorrain replied that there are only 3 engineers on staff, including himself, and they are the only ones with the ability to review Board projects. He added that it is difficult to find qualified people in the present market.

Colman expressed dissatisfaction, noting that he has been on the Board 4 years and is seeing his fifth engineer. But LaLiberte asked whether anything has been delayed or omitted as a result. Epstein said he feels that Stamski and McNary's experienced staff know more about Carlisle's process, its land and its regulations than all the new people that LandTech has been assigning to this account, and that is not desirable. Lorrain said he couldn't dispute that. Epstein said that while there may have been no delays, he is suffering from a lack of confidence.

Some members suggested that since Carlisle is a small client, it gets assigned less experienced engineers. Duscha stressed that even a small project, especially one on marginal land, may be very important to the Board. Lorrain replied that the complexity of a project, not its size, determines the allocation of staff. Duscha concurred, observing that a larger project is not necessarily more complex.

Duscha asked how much work LandTech does in Carlisle other than that for the Planning Board. Lorrain first answered none; then offered that they had revised one Notice of Intent, and designed two septic systems. Duscha said she was very uncomfortable with this situation. Lorrain assured her that his firm never does work that could come before the Planning Board, but Duscha said that even the question of a potential conflict left her uncomfortable. Mansfield added that he had heard that some members of Cons. Comm. were also uncomfortable with this policy. Lorrain subsequently agreed that if Board members are uncomfortable, he will not continue to do any work in Carlisle.

Epstein asked for a copy of Slager's resume. He said the Board members would like to talk with him and outline their expectations. He also asked whether the contract agreement of 7/24/91 was the latest between the Board and LandTech, and asked for a schedule of hourly rates for each of the firm's engineers. Lorrain offered to have Slager attend the next Board meeting, when the project he is now reviewing, Malcolm Meadows, will also be heard.

Duscha asked that future review letters be signed by both the engineer who performs the review and by Lorrain to indicate that he stands behind the conclusions, and he agreed to do so.

Planning Administrator evaluation

Hengeveld reported on the recommendation of the four members present at the previous meeting, that they were satisfied with Mansfield's performance and recommend a salary increase retroactive to February 1. Colman said he wholeheartedly agreed with the recommendation. Duscha also concurred, noting only that she would like a little more lead time when possible when she is called upon ~~as Clerk~~ to review a document.

Tice moved and Hengeveld seconded a motion to increase the P.A.'s salary rate by 3.0%, effective retroactively to February 1, 1996, as had been agreed at the time of hiring. The motion was approved 6-0.

Mansfield expressed his gratitude to the Board members and said he was enjoying very much working with them.

The meeting was adjourned at 11:00 p.m.

Respectfully submitted,

George Mansfield
Planning Administrator